



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230126-0027]

RIN 0648-BK09

Fisheries off West Coast States; Highly Migratory Fisheries; Amendment 6 to the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species; Authorization of Deep-set Buoy Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement Amendment 6 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP), which authorizes deep-set buoy gear (DSBG) as a legal gear type for targeting swordfish and catching other highly migratory species (HMS) off the U.S. West Coast. The proposed rule would establish a limited entry (LE) permitting regime for use of DSBG in the Southern California Bight (SCB). DSBG fishing would be permitted on an open-access basis outside of the SCB, in Federal waters off of California and Oregon, for all vessels possessing a general HMS permit with a DSBG endorsement. DSBG fishing would not be permitted in Federal waters off of Washington. This proposed rule includes definitions for two configurations of DSBG—standard and linked—and specifies the LE management area, permitting process, and requirements for use of the gear.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0141, via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0141 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Please submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule and subject to the Paperwork Reduction Act to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review" or by using the search function and entering the title of the collection or the OMB Control Number. Comments on the information collection requirements may also be sent by email to WCR.HMS@noaa.gov.

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: <https://www.regulations.gov>, docket NOAA-NMFS-2022-0141, or contact the Acting Highly Migratory Species Branch Chief, Rachael Wadsworth, Rachael.Wadsworth@noaa.gov, or WCR.HMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Amber Rhodes, NMFS, (202) 936-6162, Amber.Rhodes@noaa.gov.

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I. Background

Currently, two commercial gear types are authorized to target swordfish in Federal waters off the U.S. West Coast: harpoon and large-mesh drift gillnet (DGN). Of the two, DGN has produced the majority of the landings to West Coast ports. However, attrition in the DGN fishery has led to reduced swordfish landings by West Coast-based fishing vessels. The large majority of swordfish demand on the West Coast is currently met by Hawaii-based longline vessels, and by imports. Motivated by reduced participation in the U.S. West Coast swordfish fishery and increased reliance on foreign supplies of swordfish

to meet U.S. consumer demand, NMFS and the Pacific Fishery Management Council (hereafter, the Council) expressed interest in new gear types for targeting swordfish and other HMS while minimizing interactions with protected species and bycatch of non-target finfish.

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, the Council provides recommendations to NMFS regarding Fishery Management Plans and regulations to implement them. Existing regulations allow for the issuance of exempted fishing permits (EFP) for limited testing, data collection, and the target or incidental harvest of species using methods otherwise prohibited (*see* 50 CFR 600.745(b)). In 2014, the Council solicited EFP applications to test gear types or methods that could serve as an alternative to using DGN to catch swordfish in the U.S. West Coast Exclusive Economic Zone (EEZ), or to test different approaches to contemporary DGN fishery management practices. The Council received EFP applications to fish with DSBG. DSBG research trials had been underway since 2011, and EFP trials began in 2015 following a Council recommendation to issue DSBG EFPs. The results of these trials indicated DSBG could be a viable commercial fishing method with low environmental impacts. The Council also recommended issuance of EFPs for other gear types in addition to DSBG; however, comparatively fewer data have been collected from these gear types to-date. During the course of EFP fishing, DSBG-caught swordfish has typically fetched a higher price per pound than swordfish caught using DGN or longlines, or by foreign nations and imported. However, the catch per day of swordfish using DSBG is variable, ranging from zero to as many as 11 fish in a single day, with an average of 1.2 fish per day from 2015-2020.

Following the results of DSBG trials, the Council recommended authorizing the gear under the HMS FMP and implementing regulations.

DSBG employs a hook-and-buoy system to catch swordfish while they are feeding during the daytime in deep water, with hooks commonly set at depths below 250 meters. DSBG configurations include “standard” buoy gear (SBG) and “linked” buoy gear (LBG). SBG configurations consist of strike indicator buoys deployed at the surface, a vertical mainline, baited circle hooks at depth, and a weighted sinker to ensure that hooks reach depth rapidly. LBG configurations include additional sub-surface branch lines connecting the various strike indicator buoys and more hooks at depth.

The proposed rule is expected to contribute to the management of the U.S. West Coast swordfish fishery according to the National Standards for fishery conservation and management under the MSA (*see* 16 U.S.C. 1851(a) and 50 CFR part 600, subpart D). Specifically, authorizing DSBG as an additional legal gear type for commercially harvesting swordfish from Federal waters off the U.S. West Coast will contribute to the U.S. West Coast swordfish fishery’s capacity to achieve optimum yield of the Western and Central North Pacific swordfish stock (consistent with National Standard 1). This stock is currently underutilized with spawning stock biomass at nearly double maximum sustainable yield (MSY) levels, and fishing effort at roughly half of the MSY level, according to the most recent stock assessment completed by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) in 2018, which can be accessed here:

https://isc.fra.go.jp/pdf/ISC18/ISC_18_ANNEX_16_Stock_Assessment_of_WCNPO_Swordfish_through_2016_FINAL.pdf. Despite high consumer demand, over 80 percent of

swordfish consumed in U.S. West Coast States has come from foreign sources since 2015. While the Council has expressed interest in reducing reliance on foreign supplies of swordfish, the Council has also indicated that minimizing bycatch to the extent practicable (consistent with National Standard 9) is a priority.

II. Council Process and Recommendations

After a series of public meetings to develop and evaluate alternatives for a proposed action, the Council adopted its final preferred alternative for authorizing DSBG in September 2019. The Council recommended that NMFS permit an open access fishery outside of the SCB and a LE fishery inside the SCB, with a maximum of 300 LE permits to be issued. For the purpose of this proposed rule, the SCB is defined by a northern boundary of 34°26'54.96" N. latitude (*i.e.*, Point Conception, CA), a southern boundary of the U.S.-Mexico maritime border, and a western boundary of 120°28'18" W. longitude. To date, 99 percent of DSBG EFP fishing effort has occurred in this area. During the relevant Council meetings, stakeholders raised concerns about the potential for gear conflicts and crowding to occur in the SCB following DSBG authorization. The Council selected its final preferred alternative, including a LE permitting regime with tiered qualifying criteria intended to prioritize participants with demonstrated swordfish fishing experience, as a means to authorize DSBG use in the SCB with a precautionary, “phased-in” approach. At its March 2021 Meeting, the Council modified the tiered criteria by which applicants must qualify to receive LE permits, and clarified some of the terminology used in its earlier September 2019 recommendation.

In addition to the Council’s original recommendation for DSBG management measures in September 2019 and March 2021, NMFS proposes some additional regulations in this proposed rule for the purpose of monitoring fishery compliance with the Endangered Species Act, (16 U.S.C 1531, *et seq.*). NMFS alerted the Council to the rationale for these measures during its March 2022 meeting, and describes them in more detail in the next section. Lastly, additional management measures contained in 50 CFR part 300, subpart C (applicable to eastern Pacific tuna fisheries) and 50 CFR part 660, subpart K (applicable to all HMS fisheries off the West Coast States, which apply to fishing under HMS permits more broadly (*i.e.*, annual catch limits on HMS and monitoring provisions)) may also apply to DSBG fishing under the proposed rule.

III. Discussion of the Proposed Rule

Consistent with the Council's recommendations, this rule proposes to authorize DSBG as a legal gear type under the HMS FMP, and to enable permitting of an open access fishery in Federal waters south of the Oregon-Washington border outside of the SCB, and a LE fishery in the SCB. The proposed regulations for issuing LE permits include tiered qualifying criteria recommended by the Council. Fishing with DSBG would also be subject to a suite of gear specifications and management measures. This rule also proposes to implement a few additional measures that are necessary to carry out the Council's recommendations in accordance with section 7 of the Endangered Species Act and to revise the current definitions in § 660.702 of "commercial fishing," to make a minor grammatical change, and of "commercial fishing gear," to include DSBG. Several new definitions are also proposed as applicable to the rule. Finally, this rule proposes to update corresponding prohibitions listed in § 660.705.

A. Gear Endorsements

Existing regulations at 50 CFR 660.707(a) require commercial fishing vessels that fish for HMS in Federal waters off of California, Oregon, and Washington to be registered for use under a general HMS permit that authorizes the use of specific gear. This rule proposes to prohibit fishing with DSBG in Federal waters off of the State of Washington (*see* proposed § 660.715(d)(1)). Therefore under the proposed rule, gear endorsements for DSBG will be required under the existing Federal general HMS permit regulations to fish with DSBG in Federal waters south of a line extending seaward of the Oregon/Washington border (*i.e.*, off of the States of California and Oregon). Additionally, this rule proposes to require possession of a valid LE DSBG permit to fish with DSBG in Federal waters inside the SCB (*see* proposed § 660.715(d)(2)), which is further described in the next section.

B. Limited Entry Permit

Consistent with the Council’s recommendations, this proposed rule stipulates specifications and limitations on qualifying for, issuing, possessing, renewing, and transferring LE permits. This proposed rule also poses a change to contact information provided in the existing regulation at § 660.707(b)(3) for obtaining permit applications. To obtain an LE permit, an applicant will need to apply and qualify for one as part of the initial issuance process described below.

1. *Ownership requirements and limitations (proposed §§ 660.707(g)(1) through (3))*

LE permits will be issued to and held by a “person,” as defined at 50 CFR 660.702 to mean any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). A person shall only hold one LE permit, in whole or in part, including through ownership interest in a partnership, corporation, or other entity. For example, if John Doe holds a permit in their own name, they cannot also hold a permit as a member of a partnership or corporation or other entity. For purposes of enforcing this limitation, partial ownership “counts” as full ownership. For example, if John Doe holds 25 percent ownership of one permit and 25 percent ownership of another permit, that would be considered ownership of two permits, not 50 percent of one permit. To monitor and enforce this requirement, permit holders applying for initial issuance or renewal of an LE permit will be required to submit information on ownership interest as part of their LE permit application, which documents those persons that have an ownership interest in the LE permit.

If after issuance of permits, a person is found to have an ownership interest in more than one LE DSBG permit, NMFS will notify them in writing and provide 90 days to divest of the excess permit ownership interest. Once divested, NMFS will void the permit(s) owned by that person and reissue them to the next eligible applicant with vessel status as

“unidentified.” During the 90-day divestiture period, the person could surrender permit(s) in excess of the permit ownership limit to NMFS by submitting a request in writing. After the 90-day divestiture period, NMFS will revoke all LE DSBG permits held by that person (including any person who has ownership interest in the entities listed as owners on the permit) in excess of the permit ownership limit. Surrendered and revoked permits will be issued to the next eligible applicant following the process for initial issuance.

2. Vessel registration (proposed §§ 660.707(g)(2) and (6))

A particular vessel must be designated for use with the permit before the permit could be used to fish with DSBG, and that vessel must have a valid HMS permit with a DSBG endorsement. The vessel does not need to be owned by the LE permit owner. An HMS permit holder is not required to be onboard the vessel during DSBG fishing. Likewise, an LE permit holder is not required to be onboard the vessel during DSBG fishing in the SCB. A vessel may be designated on (*i.e.*, registered to) multiple LE permits, but only one LE permit can be fished on a vessel at a time.

If a permit owner wants to use a permit with a vessel other than the one registered for use with that permit, the permit owner must request a change in vessel registration. Changes in the designated vessel will only be allowed once per year, except in the case of a force majeure event or if a permit holder decides not to designate a vessel (*i.e.* undesignated). A force majeure event means an event of extraordinary circumstances including the death of a vessel owner or operator, or when a designated vessel at sea (except while transiting between ports on a trip during which no fishing operations occur) is disabled by mechanical or structure failure, fire or explosion, or the designated vessel is totally lost. Totally lost means the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk, or the costs of repair (including recovery) exceed the value of the vessel after repairs. If a permit owner chose not to designate a vessel it would not count as a change in vessel registration if they then decide to designate a vessel.

However, once the vessel is designated, the permit owner will only be able to transfer registration once in the calendar year.

To designate a vessel or change the registration for a vessel, the permit owner must submit a vessel registration transfer application through the NOAA Fisheries Permits website at https://fisheriespermits.noaa.gov/npspub/pub_cmn_login/index_live.jsp. If the application for a change in vessel registration is not approved, NMFS will issue an initial administrative determination (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at § 660.707(b)(3)(iv).

3. Change in permit ownership (proposed § 660.707(g)(7))

LE permits cannot be transferred, except for a one-time transfer to a family member upon the death or legal incapacitation of the permit holder. A family member is defined as spouse, domestic partner, cohabitant, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great grandparent, brother, sister, half-brother, half-sister, stepsibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin. One-time transfers also apply to the member of a partnership, corporation, or other entity. For example, if John Doe is a member of a partnership with Jane Smith, and John Doe died, John Doe's ownership interest could pass to a family member while Jane Smith's ownership interest remains unchanged. Changes to ownership, including the addition of individuals or entities as owners of the permit, will otherwise not be allowed. NMFS will not consider it an ownership change if shares among the existing owners changes or if a member of a partnership, corporation, or other entity leaves and is not replaced. To transfer a LE permit, the permit owner would submit a permit transfer application through the NOAA Fisheries Permits website at https://fisheriespermits.noaa.gov/npspub/pub_cmn_login/index_live.jsp. If the application for a change in vessel registration is not approved, NMFS will issue an IAD that will

explain the denial in writing. The applicant may appeal NMFS' determination following the process at § 660.707(b)(3)(iv).

4. Term of permits, permit renewal process, and permit replacement (proposed

§ 660.707(g)(4) and (5))

LE permits will be effective for one year (May 1-April 30) and will be required to be renewed each year to remain valid. The permit owner will be responsible for renewing a LE permit. To renew a LE permit, the permit owner must submit a permit renewal application through the NOAA Fisheries Permits website:

https://fisheriespermits.noaa.gov/npspub/pub_cmn_login/index_live.jsp. Permit renewals will be due by May 31st. If an LE permit is not renewed by May 31st, it will expire. A LE DSBG permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by August 31 (three months after the renewal application deadline) and NMFS determines that failure to renew was proximately caused by illness, injury, or death of the permit owner. NMFS will forfeit a LE permit that is not renewed and issue it to the next eligible applicant following the process for initial issuance of LE permits.

A paper copy of a permit must be kept on the vessel at all times and must be available to members of NMFS Office of Law Enforcement upon request. Any permit that is lost or damaged may be replaced for free by contacting the NMFS permits staff at wcr-permits@noaa.gov and requesting a new copy of the permit. Permits which are altered, erased or mutilated would be deemed invalid and must be replaced.

5. Permit fees and sanctions (proposed § 660.707(g)(8) and (9))

NMFS will charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal, permit registration, vessel registration, replacement, and appeals. The amount of the fee is calculated biennially in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of

each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

NMFS will make initial decisions regarding issuing, renewing, and transferring LE permits. Any adverse decision will be made in writing and will state the reasons for the adverse decision. NMFS may decline to act on an application for issuing, renewing, transferring, or designating a vessel on a limited entry permit and will notify the applicant if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D apply.

C. Process for Initial Issuance of Limited Entry Permits

LE DSBG permits will be issued in two phased regimes. The first phase will be an initial, one-time qualification process for applicants meeting the criteria laid out by the Council for Tiers 1-8 (*see* proposed § 660.707(g)(11)). The second phase will be an annual application process for applicants under Tier 9 (*see* proposed § 660.707(g)(12)). NMFS would issue 50 permits the first year, followed by 25 permits each year after, up to 300 permits in total. If at any time, NMFS and/or the Council determine that the maximum number of permits should be less than 300, NMFS will engage in rulemaking to specify the alternate maximum number of permits to be issued.

1. Application Process for Tiers 1-8

After publication of the final rule, applicants will be able to apply to NMFS to be considered for an LE DSBG permit under Tiers 1-8. Applications will be available through the NMFS permits website and will be due to NMFS 60 days after publication of the final rule. This will be a one-time application opportunity to qualify for an LE permit under Tiers 1-8. An applicant that fails to submit a complete application by the deadline forgoes their opportunity to obtain a permit under Tiers 1-8, and their permit may be issued to the next person in line following the initial issuance procedures. An applicant that misses the

application deadline for Tiers 1-8, is denied, or otherwise does not qualify for a permit under Tiers 1-8 could apply for a permit under Tier 9.

To qualify for a permit under Tiers 1-8, applicants have to be eligible to own a permit, in compliance with ownership limitations, and meet the criteria for one of the qualification Tiers 1-8 laid out by the Council. Descriptions of Tiers 1-8 as defined by the Council, the data that will be used to evaluate them, and how NMFS will apply are described in more detail below.

Tier 1: Tier 1 consists of EFP holders with at least 10 documented calendar days of DSBG fishing effort by December 31, 2018, based on NMFS West Coast Region Observer Program records indicating either that the EFP holder was the vessel captain for that fishing day, or that fishing effort for that day was conducted on a vessel owned by or under the EFP managed by that individual. An “EFP holder” means any individual with NMFS approval to captain a commercial vessel and use DSBG under the authority of a DSBG EFP or any individual who is identified by NMFS as having managed a DSBG EFP, including vessel owners whose vessel fished under the authority of a DSBG EFP. NMFS would consider eligible fishing effort for vessel owners, captains, and EFP managers cumulatively across EFP vessels. For example, a captain that fished 5 days of DSBG effort on one vessel and 5 days on another vessel would be considered to have met the qualification for 10 days of DSBG effort. Similarly, a vessel owner that owns multiple vessels that fished DSBG may use the sum of DSBG days fished by all their vessels to meet the 10-day requirement. The same applies to EFP managers that managed multiple vessels. A vessel owner will only receive credit for qualifying effort by the vessel during the time of their ownership. For example, a vessel owner that purchases an EFP vessel will not be able to qualify for a permit based on the vessel’s history under a prior vessel owner.

Tier 2: Tier 2 consists of California LE DGN Shark and Swordfish permit holders who made at least one large-mesh DGN swordfish landing between the 2013-2014 and

2017-2018 fishing seasons and surrendered their state or Federal LE DGN permit as part of a DGN permit trade-in or buy-back program. NMFS will qualify individuals for this tier based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

Tier 3: Tier 3 consists of EFP holders approved by the Council prior to April 1, 2021, who conducted at least 10 calendar days of DSBG fishing effort or with 10 days of DSBG effort on their vessel or by vessels they managed under the EFP by the effective date of the final rule implementing the LE DSBG permit. NMFS will qualify individuals for this tier based on a NMFS West Coast Regional Observer Program record or a properly submitted NMFS DSBG EFP logbook indicating that the EFP holders was either a vessel captain for fishing days or an EFP manager or owner, or both, of the vessel that conducted the fishing effort. The definition of an EFP holder is the same as for Tier 1. As with Tier 1, NMFS would consider the cumulative effort of captains, vessel owners, and EFP managers across vessels to meet the 10-day effort qualification. Tier 3 will consider trips through the effective date of the final rule. To enable timely review of applications and issuance of LE permits, logbooks for trips landed on the effective date of the final rule will need to be submitted within 7 days of landing to be considered under this tier. Logbooks submitted after the deadline may not be considered in qualifying applicants for Tier 3.

Tier 4: Tier 4 consists of California Swordfish permit holders who possessed a permit during the 2018-2019 fishing season and made at least one swordfish landing using harpoon gear between the 2013-2014 and 2017-2018 fishing seasons. NMFS will qualify individuals for this tier based on CDFW permit and marine landing receipt records.

Tier 5: Tier 5 consists of California LE DGN Shark and Swordfish permit holders who made at least one large-mesh DGN swordfish landing between the 2013-2014 and 2017-2018 fishing seasons and who did not surrender their state or Federal LE DGN permit as part of a trade-in or buy-back program. NMFS will qualify individuals for this tier based

on CDFW marine landing receipt and buyback records and NMFS and CDFW permit information.

Tier 6: Tier 6 consists of California LE DGN Shark and Swordfish permit holders who have not made a swordfish landing with large-mesh DGN gear since March 31, 2013, and who surrender their state or Federal LE DGN permit as part of a permit trade-in or buy-back program. NMFS will qualify individuals based on CDFW marine landing receipt and buyback records and NMFS and CDFW permit information.

Tier 7: Tier 7 consists of state or Federal LE DGN permit holders who have not made a swordfish landing with DGN gear since March 31, 2013, and did not surrender their LE DGN permit as part of a state or Federal LE DGN permit trade-in or buy-back program, based on CDFW marine landing receipts and buyback records and NMFS and CDFW permit information.

Tier 8: Tier 8 consists of any individual with documented commercial swordfish fishing experience between January 1, 1986, and the effective date of the final rule, on a first come, first served basis. NMFS will qualify individuals for this tier based on CDFW permit records showing possession of a valid commercial fishing license on that date and one of the following:

(i) A valid CDFW marine landing receipt identifying the individual as the fisherman of record;

(ii) A valid state or Federal logbook where swordfish were taken and identifying the individual as captain or crew on that day; and

(iii) A signed affidavit from a vessel owner or captain identifying the individual as vessel captain or crew on the day that swordfish were taken.

For purposes of the Tier 1-8 initial issuance qualification, NMFS intends to use NMFS permit, EFP, observer program, and logbook records; CDFW permit and buyback records; and marine landing receipts. Applicants will be able to review these records before

NMFS “freezes” the databases for purposes of qualification. “Freezing” the database means that NMFS intends to extract a dataset from NMFS and CDFW databases 60 days after publication of the final rule and use that dataset for the Tier 1-8 qualification for LE DSBG permits. Potential applicants have been on notice since 2018 that the Council has been developing a LE permit qualification for DSBG and have been able to review their data and records with NMFS and CDFW since that time. NMFS also specified at the March 2021 Council meeting the data we intend to use from NMFS and CDFW records to calculate LE permit eligibility and that we plan to provide applicants the opportunity to review and correct their data before we take a snapshot of the database for the purpose of qualification. If potential applicants have concerns over the accuracy of the records that will be used for qualifications, they should contact NMFS or the appropriate state responsible for those records. Any revisions to an entity’s records will have to be approved by NMFS or CDFW and completed as of the date we freeze the database in order for the updated information to be used for the qualification process. Points of contact are as follows:

(1) NMFS—Karen Palmigiano (562-980-4043 or *wcr-permits@noaa.gov*) for WCROP, logbook, and EFP records.

(2) California—Elizabeth Hellmers (*MFSU@wildlife.ca.gov*) for CDFW license, DGN buyback, and marine landing receipt records.

NMFS anticipates that some individuals may qualify multiple times under the same tier or different tiers. For example, a vessel owner may have eligible effort as a vessel owner and as a captain. However, a person will only be allowed to hold one LE permit. To comply with this requirement, NMFS will qualify an individual meeting multiple tiers based on their highest tier, with Tier 1 being highest, Tier 2 second highest, and so forth. NMFS also anticipates that some individuals may qualify multiple times under different names. NMFS will use ownership interest information submitted with the initial applications to identify such individuals. Individuals found to have an ownership interest in

multiple qualifying entities will be notified by NMFS in writing and will have 30 days to divest of the excess permit ownership interest and resubmit their application package. For example, John Doe owns a vessel in partnership with Jane Smith and qualifies as a vessel owner. John Doe also operates the vessel and meets the qualification criteria as a captain. However, John Doe shall only receive one permit. Therefore, John Doe must decide whether to relinquish ownership interest in the partnership's permit or relinquish his individual permit. If John Doe relinquishes his interest in the partnership's permit, Jane Smith can resubmit her application to qualify for a permit based on the partnership's history.

In addition to determining whether an applicant meets the qualification criteria to receive a permit, NMFS will rank qualified applicants within each tier to determine when they will receive a permit. Applicants that qualify in Tiers 1-5 will be ranked according to their total swordfish landings for the period and gear specified by the tier. Applicants that qualify in Tiers 6-8 will be ranked on a first come, first served basis. Per the Council's recommendation, NMFS may issue 50 LE permits in year 1 and 25 additional permits each year after with reissuance of permits that were either surrendered, revoked, or expired beyond the annual caps up to 300 valid permits in total, unless the Council recommends or NMFS determines that the maximum number of permits should be fewer than 300.

For complete applications, NMFS will send the applicant an IAD notifying the applicant of its decision to issue or deny them a permit. If approved, the IAD will also provide the applicant their "rank," or place in line for receiving a permit, and the approximate year NMFS expects to issue them a permit. If the application is denied, the IAD will explain why and notify the applicant of their right to appeal NMFS' decision and the procedures to do so.

Approved applicants will be responsible for keeping their contact information up to date with NMFS to enable NMFS to contact them when the time comes to receive their

permit. Permits will be e-mailed on or about April 1 of each year for the upcoming May 1 season to the address on record. If a permit is returned to NMFS as undeliverable, NMFS will make further attempts to contact the permit holder using the contact information on file. If NMFS is not able to contact the permit holder within 30 days, the permit would be revoked and issued to the next applicant in line, according to the process for initial issuance of LE permits.

2. Application Process for Tier 9

Once the list of approved qualifiers for Tiers 1-8 has been exhausted, NMFS will begin issuing permits under Tier 9. At that time, any individual will be eligible to apply for a LE DSBG permit under Tier 9. On or about January 15 of the year NMFS anticipates accepting Tier 9 applications, NMFS will publish a notice in the ***Federal Register*** to notify applicants of the application opportunity. NMFS will accept applications for initial issuance of LE DSBG permits under Tier 9 on an annual basis until a total of 300 LE DSBG permits are issued, unless NMFS determines that the maximum number of permits should be fewer than 300 and publishes a subsequent rulemaking. Applications will be considered on a first come, first served basis. As with Tiers 1-8, only 25 permits will be issued each year. Approved applicants above 25 will generally be rolled over to the following year and receive priority for permit issuance the following year according to the date and time that their complete applications were received.

D. Gear Specifications

The proposed regulations authorizing DSBG would provide for the use of the gear in two configurations: SBG and LBG, as defined below (*see also* proposed § 660.715(a)).

Standard Buoy Gear - An individual piece of SBG consists of a vertical monofilament mainline suspended from a buoy-array with a terminal weight. Up to three gangions with hooks may be attached to the mainline at a minimum depth of 90 meters.

Linked Buoy Gear - An individual piece (section) of LBG consists of a monofilament mainline which extends vertically from a buoy-array (either directly or from a minimum 50 foot extender) to a weight; then horizontally to a second weight; then vertically to a minimum 50 foot extender attached to a second buoy-array. Up to three gangions with hooks may be connected to each horizontal section of the mainline, all of which must be fished below 90 meters. The pieces may be linked together by the mainline, which is serviceable between each piece of LBG and must be suspended between links below a depth of 50 feet.

Additionally, both DSBG configurations (SBG and LBG) will need to meet the following specifications (see also proposed § 660.715(b)):

(1) *Buoy-array*: The surface buoy flotation and strike detection array consists of a minimum of three buoys (a minimum 45 lbs buoyancy non-compressible hard ball, a minimum 6 lbs buoyancy buoy, and a strike detection buoy) with no more than 6 feet of line between adjacent buoys, all connected in-line by a minimum of $\frac{3}{8}$ inch diameter line. Use of buoy tether attachments (*e.g.*, gear with loops and/or dangling components) is prohibited. SBG and terminal LBG buoy-arrays must include a locator flag, a radar reflector, and vessel/fisher identification compliant with all current state requirements and regulations;

(2) Weights must be a minimum of 3.6 kg;

(3) Minimum size 16/0 circle hooks with not more than 10 degrees offset; and

(4) No more than ten pieces of SBG or LBG, in total, may be deployed at one time, with no more than three hooks per piece.

The minimum depth requirement is intended so that DSBG will be fished below the thermocline where it is less likely to interact with air-breathing protected species (*e.g.*, marine mammals and reptiles) and other non-target species. Limits on pieces of SBG and sections of LBG that could be deployed at any given time, in addition to other the other

proposed gear specifications, are intended to reduce both the likelihood of interactions with non-target interactions species and the potential for any such interactions to result in mortality. For example, these specifications in addition to measures described in the next section provide for strike detection and active tending of gear such that the time a non-target species may be hooked or entangled is minimized.

E. Management Measures

In addition to the gear specifications described in the previous section, the Council also made several recommendations regarding operations, monitoring, and management of a DSBG fishery. This section describes proposed regulations based on the Council's recommendations.

Active Tending: All pieces of gear will be required to be maintained within a 5 nautical mile diameter circle, with the vessel no more than 3 nautical miles from the nearest piece of gear (see proposed § 660.715(c)((1)). These requirements allow the gear to be actively tended so that any strike can be attended to quickly.

Gear Deployment/Retrieval Timing: Gear will not be permitted to be deployed until local sunrise and will be required to be onboard the vessel no later than 3 hours after local sunset (see proposed § 660.715(c)(3)).

Use of Multiple Gears on a Single Trip: Multiple gear types may be used on the same trip as DSBG, including both SBG and LBG configurations, as long as the requirement to actively tend DSBG is met (see proposed § 660.715(c)(2)). This proposed requirement may limit the gears with which fishermen may concurrently fish with DSBG while staying within the active tending boundary. However, some other gear types may be set and retrieved on the way out to and returning from sea, and DSBG fished in between, potentially at a large distance from other gear. When fishing with multiple gear types on the same trip, retained catch must be tagged or marked to identify the gear used. This would facilitate properly attributing catch to the gear type used on a trip. Any such

identification must also distinguish between fish caught with SBG versus LBG, as is required on landing receipts.

Fishery Timing: This rule does not propose to impose any restriction on the time of year the fishery is open, so it may be permitted to operate year-round.

Species Retention: This rule does not propose to prohibit the retention and landing of any species caught using DSBG, except those prohibited from retention and landing by other applicable laws and regulations.

Fishery Monitoring: Existing regulations describe requirements for the submission of logbooks (50 CFR 660.708) and obligations for any HMS-permitted vessel to accommodate a NMFS certified observer when required by the agency (50 CFR 660.719). NMFS will determine the level of observer coverage for the DSBG fishery annually, based on anticipated fishing effort and available funding.

F. Additional Proposed Regulations

In addition to gear specifications and management measures recommended by the Council, NMFS is proposing the following additional regulations for the purpose of carrying out the Council's recommendations in accordance with obligations to monitor and manage a DSBG fishery consistent with Section 7 of the Endangered Species Act.

Pre-trip Notifications: When notified by NMFS, DSBG vessel owners and operators will be required to provide notification to NMFS at least 48 hours prior to departure on a trip to fish with DSBG (*see* proposed § 660.715(c)(4)). These pre-trip notifications give NMFS the ability to place observers on vessels. NMFS will notify vessel owners and operators of this requirement prior to issuance of LE DSBG permits or HMS permits with DSBG endorsements and subsequent permit renewals.

Protected Species Workshops: When notified by NMFS, DSBG vessel operators will be required to participate in workshops to learn mitigation, handling, and release techniques for marine mammals, sea turtles, seabirds, and other protected species (*see*

proposed § 660.715(c)(5)). NMFS will maintain a list of workshop participants, and provide documentation for participation in workshops to workshop participants. NMFS will notify vessel owners and operators of this requirement prior to issuance of LE DSBG permits or HMS permits with DSBG endorsements and subsequent permit renewals.

Area restriction for LBG: NMFS will prohibit LBG operations shoreward of a line approximating the 400m depth contour (*see* proposed § 660.715(d)(3)). This area closure is intended to reduce the threat of entanglements of protected species (primarily humpback whales) that frequent nearshore waters. This limitation on LBG was also a term and condition of DSBG EFPs.

IV. Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the HMS FMP, Amendment 6 to the HMS FMP, the MSA, and other applicable laws. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

NMFS prepared a Draft Environmental Impact Statement (DEIS) for this action, which addresses the requirements of the National Environmental Policy Act. The DEIS, which describes the full suite of alternatives analyzed by the Council and NMFS, can be found on the NMFS website at: www.fisheries.noaa.gov/bulletin/draft-eis-available-public-review-proposed-amendment-6-fishery-management-plan-west *Draft Environmental Impact Statement.*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule,

if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed action would authorize the use of an additional gear type for targeting swordfish and other HMS under the HMS FMP. It would not preclude the use of other authorized gear types or make changes to existing regulations of other fisheries or fleets in the proposed action area (*i.e.*, in Federal waters off California and Oregon). The action is intended to provide additional economic opportunity to fishermen while minimizing the environmental impacts of any additional fishing effort with DSBG.

The tiers by which NMFS would qualify and rank issuance of LE DSBG permits under the proposed action direct priority issuance to applicants with prior DSBG or swordfish fishing experience off the U.S. West Coast. In a preliminary assessment of existing records on participation in the U.S. West Coast swordfish fishery, we found it highly unlikely that limiting the maximum number of LE permits to 300 would constrain participation in a LE DSBG fishery. Rather, what may constrain initial participation in the fishery is the “phased-in” schedule of permit issuance (*i.e.*, up to 50 permits issued in the first year with up to 25 issued in each additional year on a ranked basis). Therefore, some applicants may not obtain a LE DSBG permit until later years of the program.

While authorization of DSBG would likely coincide with the cessation of issuance of DSBG EFPs (according to the specifications included in the proposed action), we note that EFPs are a limited special-privilege permit with no guarantee of renewal following the permit period. Therefore, in a situation in which a former EFP holder is unable to obtain a LE permit to fish in the SCB, any lost revenues associated would be a result of the discontinuation of the EFP as opposed to this action. Furthermore, former DSBG EFP holders who do not obtain a LE permit could still obtain an open access endorsement to fish DSBG outside the SCB. Therefore, no direct private costs of the regulations are expected aside from the optional costs of obtaining DSBG gear and a permit to fish.

The tiered LE permit qualifying criteria prioritize DGN vessels that have actively participated in the DGN fishery over “inactive” vessels. The criteria also prioritize issuing permits to DGN permit holders who participate in a state or Federal buyout and transition program by surrendering their nets and forgoing renewal of their DGN LE permit. However, the proposed action does not require any DGN vessels to participate in a transition program, and any DGN permit holders who do not obtain a LE DSBG permit could be permitted to fish with DSBG outside of the SCB on an open access basis.

Pursuant to the Regulatory Flexibility Act (RFA) and NMFS’ December 29, 2015, final rule (80 FR 81194), this certification was developed using NMFS’ revised size standards. NMFS considers all entities subject to this action to be small entities as defined by this size standard. Because each affected vessel is a small business, there are no disproportional effects to small versus large entities. The proposed action, if adopted, will not have significant adverse economic impacts on these small business entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This proposed rule revises the existing requirements for three collections of information associated with the following OMB Control Numbers: (1) 0648-0204 West Coast Region Permit Family of Forms, (2) 0648-0223 U.S. Pacific Highly Migratory Species Hook and Line Logbook, and (3) 0648-0498 West Coast Region Vessel Monitoring System and Pre-Trip Reporting System Requirements.

Two changes are being made to collection of information 0648-0204. First, the addition of a DSBG endorsement to the HMS Permit, and second, the addition of a separate and entirely new LE DSBG permit for the commercial fishery. Regarding the addition of a DSBG endorsement to the HMS Permit, it is assumed that individuals who will request the DSBG endorsement on their HMS permit already have an HMS permit; thus, there would

be no increase to the number of respondents. Because respondents must renew HMS permits periodically, the public reporting burden for adding a DSBG endorsement is not expected to increase. However, changes to the collection associated with the addition of a new LE DSBG permit are likely to increase the number of respondents for this collection by 150 new respondents. The public reporting burden for the initial Federal LE DSBG application is estimated to average 30 minutes per respondent. There is a requirement to report Ownership Interest Information for applicants seeking a permit as an entity, business or corporation, which is estimated to average 10 minutes per respondent. Federal LE DSBG renewals are also estimated to average 10 minutes per respondent, and transfers are estimated to average 30 minutes per respondent.

Collection of information 0648-0223 is being revised to add a Federal LE DSBG logbook for the commercial fishery. This change is not anticipated to impact the number of respondents nor the costs of this collection. Although there is a new logbook for recording DSBG activities, all anticipated DSBG respondents are assumed to have HMS permits and therefore already subject to existing logbook requirements, so that the new logbook would simply replace the logbook currently in use.

Collection of information 0648-0498 is being revised to add a pre-trip notification for vessels fishing with DSBG when requested by NMFS, increasing the total number of anticipated respondents and labor costs. Public reporting burden for pre-trip notifications is estimated to average 5 minutes per respondent. The estimated total number of respondents for this collection is 95; the estimated total annual burden hours are 191 hours (an increase of 34 hours); and the estimated total annual cost to the public for recordkeeping and reporting is \$105,808 (an increase of \$1,299).

NMFS seeks public comment regarding whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. NMFS also seeks public

comment regarding the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Please submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule and subject to the Paperwork Reduction Act to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review" or by using the search function and entering the title of the collection or the OMB Control Number. Comments on the information collection requirements may also be sent by email to WCR.HMS@noaa.gov.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indians-lands, Recreation and recreation areas, Reporting and record keeping requirements, Treaties.

Dated: January 26, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Subpart K—Highly Migratory Species Fisheries

2. In § 660.702, add the definition for “Change in ownership”, revise the definitions for “Commercial fishing” and “Commercial fishing gear”, and add the definitions for “Family member”, “Force Majeure”, “Initial Administrative Determination (IAD)”, “Ownership Interest”, and “Totally lost”, in alphabetical order, to read as follows:

§ 660.702 Definitions.

* * * * *

Change in ownership means the addition of a new shareholder or partner to the membership of the corporation, partnership, or other entity. A change in ownership is not considered to have occurred if a member dies or becomes legally incapacitated and a trustee is appointed to act on their behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership or other entity and is not replaced. A change in ownership is not considered to have occurred if only the name of the entity changes.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, retaining, possessing, landing and/or selling of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial fishing gear includes the following types of gear and equipment used in the highly migratory species fisheries:

(1) *Deep-set buoy gear*. Line fishing gear which consists of vertical mainlines suspended from a buoy array, with gangions with hooks attached to either a vertical line or

a horizontal line connected to the terminal ends of two vertical lines. All configurations must be set at or below a minimum depth and actively tended;

(2) *Drift gillnet*. A panel of netting, 14 inch (35.5 cm) stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom;

(3) *Harpoon*. Gear consisting of a pointed dart or iron attached to the end of a pole or stick that is propelled only by hand and not by mechanical means;

(4) *Pelagic longline*. A main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached. Legal longline gear also includes basket-style longline gear;

(5) *Purse seine*. An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets; and

(6) *Surface hook-and-line*. Fishing gear, other than longline gear, with one or more hooks attached to one or more lines (includes troll, rod and reel, handline, albacore jig, live bait, and bait boat). Surface hook and line is always attached to the vessel.

* * * * *

Family member for the purposes of change in ownership of limited entry deep-set buoy gear permits means spouse, domestic partner, cohabitant, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great-grandparent, brother, sister, half-brother, half-sister, stepsibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin.

Force majeure means an event of extraordinary circumstances including the death of a vessel owner or operator, or when a designated vessel at sea (except while transiting between ports on a trip during which no fishing operations occur) is disabled by mechanical or structure failure, fire or explosion, or the designated vessel is totally lost.

* * * * *

Initial Administrative Determination (IAD) means a formal, written determination made by National Marine Fisheries Service (NMFS) on an application or permit request that is subject to an appeal within NMFS.

* * * * *

Ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a limited entry deep-set buoy gear permit.

* * * * *

Totally lost means the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk, or the costs of repair (including recovery) would exceed the value of the vessel after repairs.

* * * * *

3. In § 660.705, add paragraphs (vv) through (bbb) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(vv) Deploy or have onboard a vessel, deep-set buoy gear (DSBG) in contravention of gear configuration specifications described at § 660.715(a) and (b).

(ww) Own or operate a vessel used to fish with DSBG in contravention of operational requirements specified at § 660.715(c)(1) and (2).

(xx) When required under § 660.715(c)(3), fail to notify NMFS or the NMFS-designated observer provider at least 48 hours prior to departure on a fishing trip during which DSBG is deployed.

(yy) Own or operate a vessel that is engaged in DSBG fishing without record of the operator's participation in a protected species workshop as required under § 660.715(c)(4).

(zz) Own or operate a vessel used to fish with DSBG in Federal waters north of a line extending seaward of the Oregon/Washington border.

(aaa) Own or operate a vessel used to fish with DSBG in the Southern California Bight (as defined at § 660.715(d)(2)) while not in possession of a valid DSBG limited entry permit.

(bbb) Own or operate a vessel used to fish a linked configuration of DSBG shoreward of a line approximating the 400 meter depth contour (according to coordinates specified at § 660.715(d)(3)) in waters north of the Northern Channel Islands to a line extending seaward from the Oregon/Washington border.

4. In § 660.707, revise paragraph (b)(3)(i) and add paragraph (g) to read as follows:

§ 660.707 Permits.

* * * * *

(b) * * *

(3) * * *

(i) A West Coast Region Federal Fisheries application form may be obtained from the West Coast Region Fisheries Permits Office or downloaded from the West Coast Region website to apply for a permit under this section. A completed application is one that contains all the necessary information, and required fees, documentation, and signatures.

* * * * *

(g) *Limited entry deep-set buoy gear (DSBG) permit*—(1) *General*. This section applies to persons (as defined at § 660.702) owning a limited entry permit to fish with DSBG (as defined at § 660.707) inside the Southern California Bight (as defined at § 660.715(d)(2) and to vessels registered to such permits. For a vessel to be used to fish with DSBG in the Southern California Bight, that vessel must be registered for use with a limited entry DSBG permit.

(2) *Basic requirements*. Limited entry DSBG permits are issued to a person, and a vessel must be specified on the permit.

(i) *Persons*. Any “person” as defined at § 660.702 may own a limited entry DSBG permit, subject to the ownership requirements and limitations at paragraph (g)(3) of this section.

(ii) *Vessels*. A vessel registered to a limited entry DSBG permit must also be registered to a valid general HMS permit with a DSBG endorsement issued pursuant to paragraphs (a) and (b) of this section. The designated vessel need not be owned by the limited entry DSBG permit owner. The same vessel may be registered to multiple limited entry DSBG permits, but only one permit may be fished at a time.

(3) *Ownership requirements and limitations—(i) Limitation on permit ownership*. No person may own more than one limited entry DSBG permit, in whole or in part, including through ownership interest in a partnership, corporation, or other entity.

(ii) *DSBG identification of ownership interest form*. Any person that owns a limited entry DSBG permit and that is applying for or renewing a limited entry DSBG permit shall document those persons that have an ownership interest in the limited entry DSBG permit. This ownership interest must be documented with NMFS via the DSBG Identification of Ownership Interest Form.

(iii) *Transferability*. Limited entry DSBG permits are not transferable, except for a one-time transfer to a family member, as defined at § 660.702, upon the death or legal incapacitation of the individual or a member of the corporation, partnership, or other entity that owns the permit, following the procedures at paragraph (g)(7) of this section. The limited entry DSBG permit owner cannot change or add additional individuals or entities as owners of the permit, or otherwise change ownership of the permit as defined at § 660.702. A transfer may not occur if such a transfer will result in a person holding more than one limited entry DSBG permit as described in paragraph (g)(3)(i) of this section.

(iv) *Divestiture, surrender, and revocation*. If NMFS discovers that a person owns or has an ownership interest in more than one limited entry DSBG permit, (including any

person who has ownership interest in the entities listed as owners on the permit), NMFS will notify the permit owner that they have 90 days to divest of the excess ownership interest. During this 90-day period, the person may surrender permit(s) in excess of the permit ownership limit to NMFS by submitting a request in writing. After the 90-day divestiture period, NMFS will revoke all limited entry DSBG permits held by that person in excess of the permit ownership limit. Surrendered and revoked permits, with vessel status as “unidentified,” will be issued to the next eligible applicant following the procedures at paragraphs (g)(11) and (12) of this section.

(4) *Renewal*. Limited entry DSBG permits are valid for one year (May 1-April 30). Permits expire April 30 of each year and must be renewed between February 1 and March 31 of each year to remain in force the following permit year.

(i) *Renewal Notices*. NMFS will send notices to renew limited entry DSBG permits to the permit owner’s most recent email address on record with NMFS. The permit owner is responsible for notifying the Fisheries Permits Office of any email address change.

(ii) *Renewal packages*. A complete limited entry DSBG permit renewal package must be received by NMFS by March 31 of each year. If a complete renewal package is not received by March 31, NMFS will not renew the limited entry DSBG permit, except under the circumstances described in paragraph (g)(4)(iii) of this section. A complete renewal package consists of a completed renewal application form, a completed DSBG Identification of Ownership Interest Form as required under paragraph (g)(3)(ii) of this section, and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The renewal package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(iii) *Forfeited permits*. A limited entry DSBG permit for which renewal is not requested will be considered expired unless the permit owner requests reissuance of the

permit by June 30 (three months after the renewal application deadline) and NMFS determines that failure to renew was proximately caused by illness, injury, or death of the permit owner. If a permit is allowed to expire, it will be forfeited and NMFS may reissue the permit to another qualified applicant following the procedures at paragraphs (g)(11) and (12) of this section.

(iv) *Renewal determinations.* Based on a complete application for renewal of a limited entry DSBG permit, if NMFS determines that the applicant has met the requirements of this section and is in compliance with any other applicable regulations, NMFS will approve the renewal and issue the permit. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(5) *Permit replacement.* Replacement permits may be issued without charge to replace lost or mutilated permits. Replacement permits may be obtained by submitting a complete permit replacement application to NMFS. An application for a replacement permit is not considered a new application. Any permit that has been altered, erased, or mutilated is invalid.

(6) *Change in vessel registration.* Limited entry DSBG permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, or replaced. A permit may not be used with any vessel other than the vessel registered for use with that permit. If the permit will be used with a vessel other than the one registered for use with the permit, the permit owner must request a change in vessel registration in accordance with paragraphs (g)(6)(ii) through (iv) of this section.

(i) *Limits on changes in vessel registration.* The registered vessel may be changed no more than once per calendar year, except in cases of a *force majeure* event as defined at § 660.702. A permit owner may also designate the vessel registration for a permit as

“unidentified,” meaning that no vessel has been identified as registered for use with that permit. Changing a permit’s designated vessel to “unidentified” is not considered a change in vessel registration for purposes of this section, but the permit is not authorized for use until a subsequent change of registration out of “unidentified” status occurs. Any subsequent change in registration out of “unidentified” status to a vessel will be considered a change in vessel registration and subject to a once-per-calendar-year limit.

(ii) *Request for change in vessel registration.* To request a change in vessel registration, a permit owner must fill out a vessel transfer application online through the NOAA Fisheries Permits website with appropriate fields completed and must submit the application to the West Coast Region Fisheries Permits Office. A complete change in vessel registration package consists of a transfer application form with appropriate fields completed, a current copy of the United States Coast Guard Documentation Form or state registration form, and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The change in vessel registration package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application. A permit owner may designate the vessel registration for a permit as “unidentified,” meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as “unidentified.”

(iii) *Agency determination on an application.* Based on a complete application for a change in vessel registration, if NMFS determines that the applicant has met the requirements of this section, NMFS will approve the change in vessel registration and issue the permit. Changes in vessel registration will take effect on the date that the change is approved by NMFS. If the application for a change in vessel registration is not approved, NMFS will issue an initial administrative determination that will explain the denial in

writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(7) *Permit ownership transfer—(i) Request for change in permit ownership.* A permit owner may request change in ownership of a permit, in compliance with the limits at paragraph (g)(3) of this section, by submitting a complete transfer application package with appropriate fields completed to NMFS. A complete transfer application package consists of all of the following:

(A) A transfer application form with appropriate fields completed;

(B) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, a corporate resolution that authorizes the conveyance of the permit to a new owner and authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, or other business entity;

(C) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), a death certificate of the permit owner(s) and appropriate legal documentation that either: Specifically registers the permit to a designated individual(s); or provides legal authority to the transferor to convey the permit ownership; and

(D) Payment of required fees.

(ii) *Incomplete application.* NMFS may require additional documentation as it deems necessary to make a determination on the application for change in ownership. The renewal package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(iii) *Agency determination on an application.* Based on a complete application for change in ownership, if NMFS determines that the applicant has met the requirements of this section, NMFS will approve the change in ownership and issue the permit. Changes in permit ownership will take effect on the date that the change is approved by NMFS. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that

will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(8) *Fees*. The Regional Administrator may charge fees to cover administrative expenses related to processing initial issuance, renewal, change in ownership, change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. A fee may not exceed administrative costs and is specified with each application form. The appropriate fee must accompany each application.

(9) *Sanctions*. NMFS may decline to act on an application for initial issuance, renewal, replacement, change in ownership, divestiture, or change in vessel registration, and will notify the applicant if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D apply.

(10) *Appeals*. In cases where the applicant disagrees with NMFS' decision on a permit application for initial issuance, renewal, replacement, change in ownership, divestiture, or change in vessel registration, the applicant may file an appeal following the procedures described at paragraph (b)(3)(iv) of this section.

(11) *Initial issuance for Tiers 1 through 8*. This section describes the process for initial issuance of limited entry DSBG permits to applicants that qualify under Tiers 1 through 8 as defined at paragraphs (g)(11)(iii)(B)(1) through (8) of this section.

(i) *Exempted Fishing Permit (EFP) holder*. For purposes of paragraph (g)(11) of this section only, exempted fishing permit (EFP) holder means any individual with NMFS approval to captain a commercial vessel and use DSBG under the authority of a DSBG EFP or any individual who is identified by NMFS as having managed a DSBG EFP, including vessel owners whose vessel fished under the authority of a DSBG EFP.

(ii) *Initial applications*. Persons may apply for a limited entry DSBG permit by completing and submitting an initial issuance application package to NMFS. The

completed application package must be submitted on the National Permit System website, or by another method approved by NMFS, no later than 11:59 p.m. on [*date 60 days after final rule publication in the Federal Register*]. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive a limited entry DSBG permit under Tiers 1 through 8 and their permit will be issued to the next eligible applicant following the procedures at paragraphs (g)(11) and (12) of this section. A complete initial issuance application package consists of the following: a completed initial issuance application form; a completed DSBG Identification of Ownership Interest Form, as required under paragraph (g)(3)(ii) of this section; a current copy of the United States Coast Guard Documentation Form or state registration form for the vessel that will be registered to the permit; and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The initial issuance application package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(iii) *Eligibility criteria for Tiers 1-8.* To qualify for a permit under Tiers 1-8, an applicant must meet all of the following criteria:

(A) The applicant is eligible to own a limited entry DSBG permit in accordance with paragraph (g)(2)(i) of this section;

(B) The applicant is in compliance with the ownership requirements and limitations of paragraph (g)(3) of this section. Applicants found to have qualified for more than one permit will be notified by NMFS in writing and will have 30 days to divest of the excess permit ownership interest and resubmit their application package;

(C) The applicant meets the criteria of one of the qualification tiers in paragraphs (g)(11)(iii)(C)(1) through (8) of this section based on data as of [*date 60 days after final rule publication in the Federal Register*]. Permits will be issued by ranking applicants according to the tiered criteria in those paragraphs, beginning with Tier 1 and ending with

Tier 8. NMFS will qualify applicants that meet the criteria of multiple tiers based on their highest tier, with Tier 1 being the highest, Tier 2 the second highest, and so on;

(1) Tier 1 consists of EFP holders with at least 10 documented calendar days of DSBG fishing effort by December 31, 2018, based on NMFS West Coast Region Observer Program records indicating either that the EFP holder was the vessel captain for that fishing day or that fishing effort for that day was conducted on a vessel owned by or under the EFP managed by that individual.

(2) Tier 2 consists of California Limited Entry Drift Gill Net (DGN) Shark and Swordfish permit holders who made at least one large-mesh DGN swordfish landing between the 2013-2014 and 2017-2018 fishing seasons and surrendered their state or Federal limited entry DGN permit as part of a DGN permit trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipt and buyback records and NMFS and CDFW permit information.

(3) Tier 3 consists of EFP holders approved by the Pacific Fishery Management Council prior to April 1, 2021, who conducted at least 10 calendar days of DSBG fishing effort or with 10 days of DSBG effort on their vessel or by vessels they manage under the EFP by *[effective date of final rule]*, based on a NMFS West Coast Regional Observer Program record or a properly submitted NMFS DSBG EFP logbook indicating either that the EFP holder was vessel captain for that fishing day or that the fishing effort for that day was conducted on a vessel owned by or under the EFP managed by that individual.

(4) Tier 4 consists of California Swordfish permit holders who possessed a permit during the 2018-2019 fishing season and made at least one swordfish landing using harpoon gear between the 2013-2014 or 2017-2018 fishing seasons, based on California Department of Fish and Wildlife (CDFW) permit and marine landing receipt records.

(5) Tier 5 consists of California Limited Entry Drift Gill Net (DGN) Shark and Swordfish permit holders who have made at least one large-mesh DGN swordfish landing

between the 2013-2014 and 2017-2018 fishing seasons and who did not surrender their state or Federal limited entry DGN permit as part of a trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

(6) Tier 6 consists of California Limited Entry Drift Gill Net (DGN) Shark and Swordfish permit holders who have not made a swordfish landing with large-mesh DGN gear since March 31, 2013, and who surrendered their state or Federal limited entry DGN permit as part of a permit trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

(7) Tier 7 consists of state or Federal limited entry drift gillnet (DGN) permit holders who have not made a swordfish landing with DGN gear since March 31, 2013, and did not surrender their limited entry DGN permit as part of a state or Federal limited entry DGN permit trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

(8) Tier 8 consists of any individual with documented commercial swordfish fishing experience between January 1, 1986, and [*effective date of the final rule*], on a first come, first served basis, based on California Department of Fish and Wildlife (CDFW) permit records showing possession of a valid commercial fishing license on that date and one of the following:

(i) A valid CDFW marine landing receipt identifying the individual as the fisherman of record;

(ii) A valid state or Federal logbook where swordfish were taken and identifying the individual as captain or crew on that day;

(iii) A signed affidavit from a vessel owner or captain identifying the individual as vessel captain or crew on the day that swordfish were taken;

(iv) *Agency determination on an application.* Based on a complete application for an initial permit under Tiers 1-8, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an initial administrative determination (IAD). If the application is approved, the applicant will receive a permit according to the permit issuance procedures in paragraph (g)(11)(v) of this section. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(v) *Permit issuance.* NMFS will issue permits to approved applicants in priority order according to the qualification tiers in paragraphs (g)(11)(iii)(C)(I) through (8) of this section, with qualified applicants in Tier 1 receiving permits first, then qualified applicants in Tier 2, and so on. Qualified applicants will be further ranked within a tier based on their total swordfish landings for the time period and gear type specified for that tier for Tiers 1-5, according to California Department of Fish and Wildlife (CDFW) marine landing receipts as of [date 60 days after final rule publication in Federal Register], or by the date and time their application is received for Tiers 6-8. NMFS will issue up to 50 permits in 2023, and up to 25 permits each year after, up to a total of 300 valid permits. Permits issued to the next eligible applicant as a result of surrender, revocation, or expiration will not count toward the annual permit issuance limits. Permits will be mailed on or about April 1 for the upcoming May 1 permit year to the address of record. Permit holders are responsible for keeping their contact information current with NMFS to receive their permit. If a permit is returned to NMFS as undeliverable, NMFS will make further attempts to contact the permit holder using the contact information on file. If NMFS is not able to contact the permit holder within 30 days, the permit will be revoked and issued to the next eligible applicant following the procedures at paragraphs (g)(11) and (12) of this section.

(12) *Initial issuance for Tier 9.* When the list of permit qualifiers from the initial issuance for Tiers 1-8 is exhausted, NMFS will begin accepting applications for additional limited entry DSBG permits on a first come, first served basis. In January of the year NMFS anticipates accepting Tier 9 applications, NMFS will publish a notice in the ***Federal Register*** to notify the public of the application opportunity. NMFS will accept applications for initial issuance of limited entry DSBG permits under Tier 9 on an annual basis until a total of 300 limited entry DSBG permits are issued.

(i) *Initial applications.* Persons may apply for a limited entry DSBG permit under Tier 9 by completing and submitting an initial issuance application package to NMFS via the National Permit System website during the annual application period February 1-March 31. The completed application package must be submitted no later than 11:59 p.m. Pacific Daylight Time on March 31st of the relevant year. A complete initial issuance application package consists of the following: a completed initial issuance application form; a completed DSBG Identification of Ownership Interest Form, as required under paragraph (g)(3)(ii) of this section; a current copy of the United States Coast Guard Documentation Form or state registration form for the vessel that will be registered to the permit; and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The initial issuance application package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(ii) *Eligibility criteria for Tier 9.* To qualify for a permit under Tier 9, an applicant must meet all of the following criteria:

(A) The applicant is eligible to own a limited entry DSBG permit in accordance with paragraph (g)(2)(i) of this section;

(B) The applicant is in compliance with the ownership requirements and limitations of paragraph (g)(3) of this section;

(iii) *Agency determination on an application.* Based on a complete application, if NMFS determines that the applicant for an initial permit under Tier 9 has met the requirements of this section, NMFS will issue an initial administrative determination (IAD). If the application is approved, the IAD will say so and the applicant will receive a permit according to the permit issuance procedures in paragraph (g)(11)(iv) of this section. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section;

(iv) *Permit issuance.* NMFS will issue permits to approved applicants under Tier 9 on a first come, first served basis, according to the date and time that their application was submitted through the National Permit System. NMFS will issue up to 25 permits each year, up to a total of 300 valid permits. If NMFS approves more than 25 applications in a single year, the approved applicants above 25 will receive priority for permit issuance the following year according to the date and time that their complete applications were received. Permits issued to the next eligible applicant as a result of surrender, revocation, or expiration will not count toward the annual permit issuance limits.

5. In § 660.715, revise the section heading and add paragraphs (a) through (d) to read as follows:

§ 660.715 Deep-set buoy gear fishery.

(a) *Gear configurations.* Deep-set buoy gear (DSBG) configurations must conform to the following specifications:

(1) *Standard buoy gear (SBG).* An individual piece of SBG must consist of a vertical monofilament mainline suspended from a buoy-array with a terminal weight. No more than three gangions with hooks may be attached to the mainline. No gangions with hooks may be attached at a depth shallower than 90 meters.

(2) *Linked buoy gear (LBG)*. An individual piece (section) of LBG must consist of a monofilament mainline that extends vertically from a buoy-array (either directly or from a minimum 50-foot extender) to a weight; then horizontally to a second weight; then vertically to a minimum 50-foot extender attached to a second buoy-array. No more than three gangions with hooks may be connected to each horizontal section of the mainline. No gangions with hooks may be attached at a depth shallower than 90 meters. Individual pieces may be linked together by the mainline. The links between each piece of LBG must be serviceable.

(b) *Additional gear configuration specifications*. Use of SBG and LBG must conform with the following requirements:

(1) *Surface buoy flotation and strike detection array requirements*. The surface buoy flotation and strike detection array must include a minimum of three buoys (a minimum 45-pound buoyancy non-compressible hard ball, a minimum 6-pound buoyancy buoy, and a strike detection buoy), with no more than 6 feet of line between adjacent buoys, all connected in-line by a minimum of $\frac{3}{8}$ inch diameter line.

(i) Buoys must be free of tether attachments (*e.g.*, non-streamlined gear with loops and/or dangling components).

(ii) SBG and terminal LBG buoy-arrays must include a locator flag, a radar reflector, and vessel/fisher identification compliant with all current state requirements and regulations.

(2) *Weight requirements*. Weights must be a minimum of 3.6 kilograms.

(3) *Circle hook requirements*. Circle hooks must be used that are a minimum size 16/0 with not more than 10 degrees offset.

(4) *Gear pieces and hook limitations*. No more than ten pieces of SBG or LBG, in total, may be deployed at one time, with no more than three hooks per piece.

(c) *Operational requirements.* SBG and LBG must be fished in accordance with the following operational requirements.

(1) *Active tending.* All pieces of gear must remain within 5 nautical miles of the vessel at all times, and the vessel may be no more than 3 nautical miles from the nearest piece of gear.

(2) *Fishing multiple gear types.* Gear types other than DSBG may be used on the same trip when DSBG is used, as long as the requirement to actively tend DSBG (as described at paragraph (c)(1) of this section) is met. If multiple gear types, including gear other than DSBG, are used on the same trip as DSBG, catch must be tagged or marked to identify the gear used, including differentiating whether caught with SBG or LBG.

(3) *Timing of gear deployment and retrieval.* Gear may not be deployed until local sunrise and must be onboard the vessel no later than 3 hours after local sunset.

(4) *Pre-trip notification.* When requested by NMFS, DSBG vessel owners or operators are required to notify NMFS or the NMFS-designated observer provider at least 48 hours prior to departing on each fishing trip during which DSBG will be fished. The vessel owner or operator must communicate to the observer provider: the owner's or operator's name, contact information, vessel name, port of departure, estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (Monday through Friday between 8 a.m. to 4:30 p.m., Pacific Time) to indicate whether an observer will be required on the subject fishing trip. Contact information for the current observer provider can be obtained by calling the NMFS West Coast Region Sustainable Fisheries Division at (562) 980-4238.

(5) *Protected species workshops.* When requested by NMFS, the operator of a vessel either registered to a limited entry DSBG permit or planning to fish under a DSBG endorsement must attend a workshop conducted by NMFS on mitigation, handling, and release techniques for protected species.

(d) *Geographic area restrictions.* DSBG fishing is permitted throughout the Management Area defined in 50 CFR 660.703 with the following area restrictions:

(1) *Federal waters offshore of California and Oregon only.* Fishing with DSBG may not occur in Federal waters north of a line extending seaward from the Oregon/Washington border.

(2) *Limited entry-only area.* Except for vessels registered to a valid DSBG limited entry permit, fishing with DSBG may not occur in Federal waters within the Southern California Bight, which for this purpose is defined with a northern boundary of 34°26'54.96" N. latitude (*i.e.*, Point Conception), a southern boundary of the U.S.-Mexico maritime border, and a western boundary of 120°28'18" W. longitude.

(3) *Linked buoy gear area restriction.* Fishing with DSBG in a LBG configuration in waters north of the Northern Channel Islands to a line extending seaward from the Oregon/Washington border may not occur shoreward of a line approximating the 400 meter depth contour, which is defined by straight lines connecting all of the following points in the order stated in the following table.

Table 1 to paragraph (d)(3)

Latitude	Longitude
45.785378	-124.721611
45.731988	-124.755707
45.676058	-124.662448
45.635778	-124.733532
45.627501	-124.621223
45.421342	-124.428881
45.368012	-124.524815
45.219954	-124.426593
45.192831	-124.640233
45.073777	-124.601143
45.122584	-124.728187
45.012240	-124.512643
44.827950	-124.645508
44.789368	-124.722827
44.703649	-124.815421
44.529842	-124.804136
44.507522	-124.883072
44.415352	-124.858176
44.208665	-124.994868

43.942293	-124.974502
43.795680	-124.685260
43.579894	-124.645446
43.232513	-124.799284
43.226291	-124.883682
42.905163	-124.913752
42.753934	-124.866742
42.748993	-124.751655
42.520896	-124.747080
42.463017	-124.822607
41.824611	-124.517470
41.428980	-124.513482
41.156773	-124.396132
40.801184	-124.492790
40.681958	-124.550870
40.602740	-124.480125
40.622580	-124.645995
40.546989	-124.700835
40.400783	-124.585363
40.370014	-124.431174
40.344876	-124.507828
40.269847	-124.446270
40.279429	-124.657027
40.117493	-124.304705
40.041456	-124.285170
40.042494	-124.155198
39.965786	-124.231615
39.808303	-124.097017
39.540607	-123.943484
39.528835	-123.992885
38.911050	-123.982148
38.491136	-123.647679
38.256021	-123.526302
38.228410	-123.438852
38.073446	-123.533062
37.844809	-123.404954
37.623812	-123.050253
37.394689	-122.920853
37.323790	-122.940568
37.189284	-122.863927
36.968232	-122.527184
37.005852	-122.408848
36.945123	-122.425076
36.781748	-122.055455
36.806676	-121.905280
36.680249	-122.025454
36.531101	-121.993385
36.371824	-122.014963
36.315554	-122.101240
36.166525	-121.760807
36.033982	-121.623149
35.584240	-121.366349
35.165706	-121.033163
34.865218	-120.993335

34.929599	-121.074138
34.541665	-120.838291
34.315659	-120.541578
34.268981	-120.379230
46.274388	-124.410349
46.075505	-124.813587
45.968227	-124.739233
34.693224	-120.962686
37.740079	-123.192427
45.169315	-124.502340
45.063305	-124.719824

8. In § 660.716, revise the section heading to read as follows:

§ 660.716 Harpoon and surface hook-and-line fisheries [Reserved]

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